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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

MICHAEL PADILLA et al.,

Plaintiffs and Appellants,

v.

CARSON REDEVELOPMENT  
AGENCY,

Defendant and Respondent.

B191034

(Los Angeles County  
Super. Ct. No. BC340591)

APPEAL from a judgment of the Superior Court of Los Angeles County,  
Michael L. Stern, Judge. Reversed and remanded.

Jay M. Coggan & Associates, Jay M. Coggan, Heather E. Sterling and  
Joseph W. Singleton for Plaintiffs and Appellants.

Aleshire & Wynder, William W. Wynder, Sunny K. Soltani and Anthony R.  
Taylor for Defendant and Respondent.

Appellants Michael and Bertha Padilla filed a complaint against respondent Carson Redevelopment Agency (the Agency) seeking to quiet title to a 45-unit senior housing complex located in Carson. According to the complaint, the Padillas are the owners of the property and the Agency is the beneficiary of a deed of trust covering it. The Padillas contend that the Agency wrongfully refused to record a reconveyance.<sup>1</sup> A demurrer was sustained and the issue raised is straightforward: whether, assuming the truth of the material facts pled, the complaint stated a cause of action. (See *Montclair Parkowners Assn. v. City of Montclair* (1999) 76 Cal.App.4th 784, 790.) The parties, who were involved in related litigation for three years, press for resolution of factual issues pertaining to the scope of the deed of trust, although neither that document nor the agreement setting forth the underlying obligation was attached to the complaint or included in judicially noticed documents presented to the trial court.

It is a basic precept of appellate law that documents not before the trial court are beyond the scope of appellate review, and factual statements in the briefs are disregarded when not supported by the record. (*Pulver v. Avco Financial Services* (1986) 182 Cal.App.3d 622, 632.) Accordingly, we cannot resolve whether the deed of trust secures something more than the debt described in the Padillas' complaint and, if so, whether either party's failure to raise that obligation in prior litigation precludes it from raising it now. Based on the information properly before us, we conclude that the Padillas' complaint stated a cognizable cause of action. We therefore reverse and remand for further proceedings.

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<sup>1</sup> A reconveyance is a document containing, among other things, reference to a deed of trust and "a recital that the obligation secured by the deed of trust has been [satisfied]." (See Civ. Code, § 2941, subd. (b)(3)(A).)

## **FACTUAL AND PROCEDURAL BACKGROUND**

Certain background facts are not in dispute. In 1994, the parties entered into an agreement (the 1994 Agreement) which required the Padillas to offer 22 of the 45 units in their complex as low income housing for senior citizens for a period of 30 years. In return, the Agency agreed to provide rental assistance for six years at a rate of \$295 per month for each of the 22 units actually occupied by a qualified tenant.

In 1999, the Padillas sought to extend the rental assistance for an additional 24 years and to expand coverage to all 45 units in the building. Instead, the Agency agreed to loan the Padillas \$850,000 to be used to buy down their existing mortgage. The loan was to be forgiven at the end of the contractual period as long as the Padillas complied with the terms of the agreement. Accordingly, in 2000, the parties entered into an Amended and Restated Affordable Housing Agreement (the Buydown Agreement). Subsequently, the Agency discovered that prior to execution of the Buydown Agreement, a Carson city council member -- Agapito Fajardo -- had extorted a substantial payment from the Padillas in exchange for his assurance that the Buydown Agreement would be approved.<sup>2</sup>

### *Prior Litigation*

In August 2003, the Agency sued the Padillas. The first cause of action was for “avoidance” of the Buydown Agreement on the ground that it was made in

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<sup>2</sup> The parties’ briefs state that Fajardo extorted \$75,000 from the Padillas but that in a plea agreement, he admitted to receiving only \$50,000.

violation of Government Code section 1090.<sup>3</sup> In the prayer for relief, the complaint alleged that the Agency sought to recover in the first cause of action “a judgment declaring and ordering that the [Buydown Agreement] is irrevocably null, void, and of no effect, and that [the Agency] is entitled to a return of the \$850,000 paid to [the Padillas] pursuant thereto.” The second cause of action was for a constructive trust and an accounting, and sought a declaration that the Padillas held the \$850,000 received in trust for the benefit of the Agency and were required to provide an accounting. The third cause of action sought rescission of the Buydown Agreement based on fraud and restitution in the amount of \$850,000. The fourth cause of action was for declaratory relief with respect to the continuing validity of the 1994 Agreement. In the prayer for relief, the fourth cause of action sought both nullification of the Buydown Agreement and a declaration that “by reason of the nullification of the Buydown Agreement the [1994 Agreement] continues in effect as originally agreed by the parties, without modification; and . . . [the Padillas] remain obligated, for a period of thirty years from the date of execution of the [1994 Agreement], to rent 22 of the units in the Property at an Affordable Rent to Qualified Tenants, and otherwise to comply with the requirements of the [1994 Agreement].”

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<sup>3</sup> Unless otherwise specified, statutory references herein are to the Government Code. Section 1090 provides in part that “city officers or employees shall not be financially interested in any contract made by them in their official capacity, or by any body or board of which they are members.” Section 1092 provides that “[e]very contract made in violation of any of the provisions of Section 1090 may be avoided at the instance of any party except the officer interested therein.”

The Agency moved for summary judgment or adjudication.<sup>4</sup> The court's November 2004 order granted summary adjudication as to the first cause of action and denied summary adjudication as to the second, third, and fourth causes of action. The court stated in its order that "the statutes categorically void a contract when the Public Official has a financial interest in it" and that "strong public policy dictates the voidance of any contract within the purview of [section] 1090." Later, the Agency voluntarily dismissed without prejudice the unadjudicated causes of action. (See *Carson Redevelopment Agency v. Padilla* (2006) 140 Cal.App.4th 1323, 1337.) Judgment was entered in May 2005, and provided that the court had granted the motion for summary adjudication in favor of the Agency on its first cause of action and that: "[The Agency] shall recover from [the Padillas], jointly and/or severally [*sic*], the sum of \$850,000, plus interest at the legal rate of 10 percent per annum, commencing on November 17, 2004, until a full satisfaction of judgment is filed with this Court." The remaining causes of action were dismissed "without prejudice."

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<sup>4</sup> In the instant action, the Agency asked the trial court to take judicial notice of the judgment, order on summary judgment/adjudication, complaint (without exhibits), first amended cross-complaint, request for dismissal of cross-complaint, and answer to complaint in the prior action. The trial court granted judicial notice as requested.

After the present appeal was filed, the Agency requested this court to take judicial notice of certain documents in the clerk's transcript for the appeal from the judgment in the prior lawsuit, including the Buydown Agreement, the Padillas' objection to the Agency's proposed judgment, the order denying the objections, the notice of entry of judgment, and the notice of appeal. The request was denied because there had been "no showing whether the documents [the Agency] ask[ed] us to judicially notice were before the trial court in this case and, if not, why not and why judicial notice should be taken if they were not."

The Padillas had filed a cross-complaint in the earlier litigation. In it, they alleged that prior to entering into the 1994 Agreement, they had been misled by representatives of the Agency, who falsely informed them that the law allowed the Agency to provide rental assistance for only 49 percent of the units in the complex and to guarantee only six years of rental assistance. These representatives also allegedly told the Padillas that the rental assistance would be renewed after six years. In the cross-complaint, the Padillas sought, among other things, reformation or rescission of the 1994 Agreement. The Padillas voluntarily dismissed the cross-complaint without prejudice in September 2004, shortly before summary adjudication was granted on the first cause of action of the Agency's complaint.

In June 2006, Division Two of this Court affirmed the judgment in the prior action in *Carson Redevelopment Agency v. Padilla*, *supra*, 140 Cal.App.4th 1323. The issues presented to the court were (1) whether Fajardo had a financial interest in the Buydown Agreement within the meaning of section 1090 and (2) whether requiring the Padillas to disgorge the entire \$850,000 was an appropriate remedy. (*Id.* at pp. 1332, 1335.) The court answered both questions in the affirmative, concluding that (1) “an extortion payment solicited by a public official in exchange for approval of a public contract creates an indirect financial interest” and (2) “[i]f a corrupt public official demands an extortion payment in exchange for a public contract, the victim should not pay . . . [and if he or she does] . . . , the victim will not be permitted to retain any consideration received.” (*Id.* at pp. 1334, 1337.)

To the Padillas' protest that they had been “unfairly punished” by the requirement that they disgorge the \$850,000, the court responded: “[T]his is not a punishment. It is a recovery of public money. Moreover, they are in a better position than [the defendant in *Thomson v. Call* (1985) 38 Cal.3d 633] because he

lost both his purchase money and his land.<sup>[5]</sup> The Padillas are in the same position they were in before; they will be the owners of [the complex], they will have high debt service and they will need financial assistance from the City of Carson. Nothing stops them from going to the City of Carson to work out a contract that is not tainted by a conflict of interest.” (*Carson Redevelopment Agency v. Padilla*, *supra*, 140 Cal.App.4th at p. 1337.)<sup>6</sup>

Finally, the court addressed whether entry of judgment was premature: “In the first cause of action for avoidance of the Buydown Agreement, the Agency alleged that it was ‘entitled to a return of the \$850,000.’ In its motion for summary

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<sup>5</sup> In *Thomson v. Call*, Call, a member of the city council, sold a parcel of land to a developer who was engaged in negotiations with the city to rezone a parcel of land. Ultimately, the developer resold Call’s land to the city for use as a park. Call had asked the city attorney’s office whether he could vote on issues related to the developer’s request for rezoning and followed its advice in voting or abstaining. Addressing the issue of “the appropriate remedy where a fully executed and performed contract has been found to violate section 1090,” the court affirmed the remedy of allowing the city to both retain the land and recover the payment Call received from the developer, noting that this severe remedy was “consistent with a long, clearly established line of cases.” (*Id.* at pp. 646-647.)

<sup>6</sup> On the first page of its brief, the Agency asserts that in affirming the grant of summary adjudication, the court of appeal “upheld the remedy granted by the lower court that:

The Padillas have to disgorge all the benefits received under the Buydown Agreement while the Agency gets to keep *all* the benefits -- this includes the deed of trust which was recorded against the property to protect not only the \$850,000 but also the 30 year covenant for senior citizen low income housing.

(See *Padilla I*, *supra*, 140 Cal.App.4th at pp. 1335-36; emphasis added.)”

As appellants note in their reply brief and as counsel for the Agency conceded at oral argument, the opinion contains no such language.

judgment or adjudication, it stated, inter alia, that ‘under state law a public agency that awarded . . . a void contract is entitled to a full disgorgement of any benefits.’ Once the trial court granted summary adjudication of the first cause of action, the Agency was entitled to recover the \$850,000. When the Agency dismissed its second, third and fourth causes of action, nothing else remained to be tried. At that point it was proper for the trial court to enter judgment in favor of the Agency.” (*Carson Redevelopment Agency v. Padilla, supra*, 140 Cal.App.4th at p. 1337.)

### *Underlying Complaint*

In September 2005, after summary adjudication had been granted in favor of the Agency in the prior litigation but many months before the appeal was resolved, the Padillas filed the underlying complaint against the Agency seeking to compel it to reconvey a deed of trust covering the complex and to quiet title. The complaint alleged that in March 2000, the Padillas, as owners of the complex, signed and delivered to the Agency a deed of trust to act as security for a mortgage buydown loan in the amount of \$850,000. Describing the prior litigation, the complaint stated: “On or about August 28, 2003, [the Agency] filed an action against [the Padillas] . . . [and] obtained a judgment . . . for an avoidance of [the] contract under Government Code section 1090 and for the return of the \$850,000.00 provided to [the Padillas] and secured by the deed of trust on the Property.” The Padillas allegedly paid the judgment entered in that action in July 2005, and the Agency filed an “Acknowledgment of Full Satisfaction of Judgment.” Shortly thereafter, the Padillas learned that the deed of trust had not been reconveyed and made a demand on the Agency that it be reconveyed. The Agency refused.



### *The Demurrer*

The Agency demurred to the Padillas' complaint on the ground that the prior judgment did not provide for reconveyance and that the deed of trust was a benefit it was entitled to keep under section 1090. The Agency insisted that a demand for reconveyance of the deed of trust should have been raised as a compulsory cross-claim in the prior lawsuit.<sup>7</sup> The Padillas's opposition raised Civil Code section 2941.<sup>8</sup> In response, the Agency further asserted that that provision did not apply to the payment of a judgment for disgorgement under section 1090.

By order dated December 6, 2005, the trial court sustained the demurrer, stating that "Government Code section 1090 forecloses this action." At the hearing, the court further explained its understanding that "Civil Code section 2941(b) is [not] applicable." Judgment was entered in favor of the Agency and this appeal followed.

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<sup>7</sup> The Agency contended, in addition, that the action was premature or "not ripe" as the appeal was pending in the parties' dispute over the \$850,000. This argument has been rendered moot by resolution of the appeal.

<sup>8</sup> Section 2941 of the Civil Code provides that "within 30 calendar days after the obligation secured by any deed of trust has been satisfied," the beneficiary "shall execute and deliver to the trustee the original note, deed of trust, request for a full reconveyance, and other documents as may be necessary to reconvey, or cause to be reconveyed, the deed of trust." (*Id.*, § 2941, subd. (b)(1).) Thereafter, the trustee must "execute the full reconveyance and shall record or cause it to be recorded in the office of the county recorder in which the deed of trust is recorded within 21 calendar days after receipt" of the above documents. (*Id.*, § 2941, subd. (b)(1)(A).) The statute provides that failure to comply with its provisions "shall make the violator liable to the person affected by the violation for all damages which that person may sustain by reason of the violation" and subjects the violator to a monetary penalty. (*Id.*, § 2941, subd. (d).)

## **DISCUSSION**

### **I**

#### **Absent an Underlying Obligation a Deed of Trust Confers No Benefit**

When a party seeks reconveyance of a deed of trust, the principal issues are factual: what is the obligation secured by the deed of trust and has it been satisfied? The Padillas alleged in their complaint that they executed a deed of trust as security for the \$850,000 given or loaned to them by the Agency in the Buydown Agreement, and that they fully repaid the loan with interest after judgment was entered in the prior action and before instituting the underlying suit. Unable at the pleading stage to contest these facts or provide any evidence concerning the contents of the deed of trust or the nature of the obligation that underlay it, the Agency convinced the trial court that the deed of trust should not be reconveyed because the unreconveyed deed of trust was a “benefit” derived from the Buydown Agreement which it was entitled to keep. This represents a misunderstanding of the nature and operation of a deed of trust.

As numerous courts and commentators have explained, a deed of trust is, in practical effect, a security instrument, generally executed for the purpose of securing a promissory note, and “entitl[ing] the lender to reach some asset of the debtor if the note is not paid.” (*Alliance Mortgage Co. v. Rothwell* (1995) 10 Cal.4th 1226, 1235, quoting Bernhardt, Cal. Mortgage and Deed of Trust Practice (Cont.Ed.Bar.2d ed. 1990) § 1.3, p. 5; see also 1 Bernhardt, Cal. Mortgage and Deed of Trust Practice (Cont.Ed.Bar.3d ed. 2007) § 1.3, p. 4 [“A security agreement is a promise by the debtor that certain assets can be reached by the creditor if the debt is not paid. The security agreement does not create the obligation to pay; this is usually evidenced by a separate [instrument]. . . . In lay terms, . . . a security agreement says, ‘If I fail to pay, you can take this property’”];

4 Miller & Starr, Cal. Real Estate (3d ed. 2000) § 10.2, p. 16 [“In practical effect, if not in legal parlance, a deed of trust is a lien on the property.”].)

When executed by the trustor (here, the Padillas), a deed of trust conveys a limited legal title to the trustee, enabling it to act on behalf of the beneficiary (here, the Agency) and either reconvey when the underlying obligation is satisfied, or foreclose if the trustor defaults on the underlying obligation.<sup>9</sup> (See, e.g., 4 Miller & Starr, *supra*, § 10.4, p. 25 [explaining that a trustee under a deed of trust “has none of the incidents of ownership except the power to convey on the trustor’s default” and that “[l]egal title passes to the trustee solely for the purpose of securing the performance of the [underlying] obligation, and the trustee receives only such title as is necessary for execution of its trust”]; 1 Bernhardt, *supra*, § 1.36, p. 30 [explaining that the function of a trustee under a deed of trust “is to reconvey the property to the trustor if the loan is repaid or to foreclose if it is not”]; *Monterey S.P. Partnership v. W.L. Bangham, Inc.* (1989) 49 Cal.3d 454, 460 [“[The trustee] had only two duties with respect to the property. Had the trustor . . . satisfied the debt secured by the deed of trust, [the trustee] would have been obligated to reconvey its interest in the property to [the trustor] . . . . When, as actually occurred, [the trustor] defaulted on its obligation, [the trustee] was required on proper request from the beneficiaries to exercise the power of sale contained in the deed of trust.”]; *Lupertino v. Carbahal* (1973) 35 Cal.App.3d 742, 748 [“[T]he ordinary trust deed conveys the legal title to the trustee only so far as may be necessary to the execution of the trust.”].) A deed of trust gives neither the

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<sup>9</sup> The trustee named is generally a title company who will either “reconvey on demand, or . . . be substituted out if there will be a foreclosure sale,” or the beneficiary may choose its own nominee. (See 1 Bernhardt, Cal. Mortgage and Deed of Trust Practice, *supra*, §§ 1.36-1.37, pp. 30-31.)

trustee nor the beneficiary any advantageous rights over the property unless the trustor defaults on the underlying obligation. (*Ibid.*) All incidents of title are retained by the trustor, including “the right to possession of the property and its rents and profits” and the right to “sell transfer, or devise the encumbered property, or grant an easement across it . . . .” (4 Miller & Starr, *supra*, § 10.2, pp. 16-17.)

A deed of trust cannot exist in a vacuum. Once the underlying obligation is satisfied, the deed of trust is automatically extinguished by operation of law. (See, e.g., *Alliance Mortgage Co. v. Rothwell*, *supra*, 10 Cal.4th at p. 1235 [“A security interest cannot exist without an underlying obligation, and therefore a . . . deed of trust is generally extinguished by . . . payment . . . .”]; *Bank of Italy etc. Assn. v. Bentley* (1933) 217 Cal. 644, 657 [“The estate of the trustees absolutely ceases upon the payment of the debt [citation], leaving the whole title in the [trustor] in whom it was vested at the execution of the trust-deed, or his successors, and leaving nothing to the trustees except the bare legal title of record, which they can be compelled to reconvey to the owner simply to make the record title clear.”]; *Snider v. Basinger* (1976) 61 Cal.App.3d 819, 823 [“When the obligation secured by a trust deed is satisfied, the deed is terminated and title to the property automatically reverts in the trustor or his successor without a reconveyance. [Citations.] The trustor is entitled to a reconveyance [citation], but the legal effect of reconveyance is only to clear the title of record.”].)

In view of these well-established principles, the Agency’s insistence that the unreconveyed deed of trust provides a benefit that it is entitled to retain under section 1090 is perplexing. There is no benefit to be had by anyone from retention of an extinguished deed of trust in the chain of title to the Padillas’ property. Any benefit received by the Agency was derived from *the obligation* secured by the deed of trust. The complaint alleged that the deed of trust “act[ed] as security for a mortgage buy-down on [the complex] in the amount of \$850,000.” The complaint

mentions no other obligation, but does allege that the Padillas paid that sum with interest. Taking the allegations of the complaint as true, the Padillas have asserted that the obligation secured by the deed of trust has been extinguished, leaving only a duty on the part of the Agency to reconvey or instruct the trustee to reconvey. To the extent the Agency contends that the deed of trust secures some other obligation, it raises a factual dispute which demurrer cannot resolve. The deed of trust was not attached to the complaint and the Agency did not ask the trial court take judicial notice of it. (See *StorMedia Inc. v. Superior Court* (1999) 20 Cal.4th 449, 457, fn. 9 [in ruling on a demurrer, trial court may take judicial notice of the “the existence of a document” but “the truthfulness and proper interpretation of the documents are disputable”].) We must accept the allegations of the complaint rather than an unsupported factual statement in the brief. (*Pulver v. Avco Financial Services, supra*, 182 Cal.App.3d at p. 632.)

## II

### **Civil Code Section 2941 Does Not Conflict with Section 1090**

In light of the foregoing, the trial court’s ruling that section 2941 of the Civil Code does not apply to the deed of trust at issue in the underlying lawsuit did not result in any substantive benefit to the Agency. Section 2941 clarifies who must prepare and record a reconveyance and when such actions must be undertaken, but makes no change in the law governing the nature and operation of deeds of trust. Satisfaction of the obligation underlying a deed of trust extinguishes the deed of trust and causes title to revert to the trustor. (*Alliance Mortgage Co. v. Rothwell, supra*, 10 Cal.4th at p. 1235; *Snider v. Basinger, supra*, 61 Cal.App.3d at p. 823.) Section 2941 comes into play only after the obligation furnishing the benefit has been satisfied and title has reverted. At that point, section 2941 requires preparation and recordation of a reconveyance in order to clear title records.

Avoiding the statutory obligation imposed by section 2941 would not allow the beneficiary to retain a legal interest in the trustor's property; it would merely cloud the title records in violation of the public policy of this state. (See Civ. Code, §§ 882.020 [creating an expiration date for recorded security interests, including deeds of trust] and 880.020 [declaring as public policy that “[r]eal property . . . should be made freely alienable and marketable . . . in order to enable and encourage full use and development of the real property” and that abandoned or invalid “[i]nterests in real property and defects in title created at remote times . . . often constitute unreasonable restraints on alienation and marketability of real property”].) Because Civil Code section 2941 does not deprive the beneficiary of a trust deed of any substantive benefit, there is no conflict between it and section 1090 and no need to reconcile their provisions.

The Agency alternatively contends that section 2941 of the Civil Code imposes no duty in this situation because the Padillas repaid the \$850,000 only after judgment was entered on the debt. The requirements of section 2941 commence “[w]ithin 30 calendar days after the obligation secured by any deed of trust has been satisfied . . . .” (§ 2941, subd. (b)(1).) It contains no exception for obligations satisfied after judgment, and we perceive no basis to read such limitation into its provisions. (See *Viking Pools, Inc. v. Maloney* (1989) 48 Cal.3d 602, 606 [“If the statutory language is clear and unambiguous, there is no need for construction.”].) The fact that a property owner and lender felt impelled to resort to litigation to resolve a dispute about the precise nature or amount of a debt should not result in a permanent cloud on the property's title once the litigation is resolved and the debt is paid.

### **III**

#### **Entry of Judgment on the Underlying Obligation Does Not Foreclose a Later Action for Reconveyance of the Deed of Trust**

The Agency contends that the questions raised by the complaint have been “fully litigated, adjudicated, appealed, and upheld . . . .” To support its contention, the Agency cites Code of Civil Procedure section 426.30, which requires “a party against whom a complaint has been filed and served” to “allege in a cross-complaint any related cause of action which (at the time of serving his answer to the complaint) he has against the plaintiff . . . .”

In its demurrer, the Agency contended that the Padillas should have asserted a cross-claim for release of the deed of trust in the prior litigation. But the Padillas did not have a claim for release or reconveyance “at the time of serving [their] answer to the [prior] complaint].” Under Civil Code section 2941, subdivision (a), they could assert no such claim until after they had satisfied the obligation secured by the deed of trust and the beneficiary and trustee had failed to fulfill their duties within the statutory timeframe. (See Civ. Code § 2941, subd. (b)(1) [giving the beneficiary “30 calendar days after the obligation . . . has been satisfied” to “execute and deliver to the trustee the original note, deed of trust, request for a full reconveyance, and other documents as may be necessary to reconvey, or cause to be reconveyed, the deed of trust”] and (b)(1)(A) [giving the trustee “21 calendar days” after receipt of the documents from the beneficiary to execute and record the reconveyance].)

In its brief on appeal, the Agency raises a new factual contention -- that “[t]he primary purpose of the deed of trust was (and is) to secure the performance by the Padillas of their affordable housing covenant contained in the Buydown Agreement.” The Agency further contends that under section 1090 and the judgment entered in the prior litigation, the Agency is legally entitled to retain all

benefits of the Buydown Agreement, including the Padilla's promise to provide low cost senior housing until 2024. The Padillas assert that the Agency is attempting to "add to its judgment," which adjudicated the Agency's cause of action for avoidance of the Buydown Agreement and required the Padillas to disgorge the \$850,000 but said nothing about any other obligation or benefit.<sup>10</sup>

The only issue properly before us in this appeal is whether the Padillas' complaint stated a cause of action on any theory. In alleging that they satisfied the obligation secured by a deed of trust and that the beneficiary and trustee thereafter refused to reconvey as required by Civil Code section 2941, the Padillas asserted a cognizable claim.<sup>11</sup> In its demurrer, the Agency contended that the Padillas were precluded from asserting a claim for reconveyance of the deed of trust under Civil Code section 2941 by section 1090 or res judicata or because the provision did not apply to obligations satisfied after litigation and judgment. For the reasons discussed above, they were not. The further contention that reconveyance is not required because the deed of trust secured the Padillas' promise to provide low cost senior housing was not raised before the trial court and depends on the truth of facts not alleged in the complaint or in documents judicially noticed by the trial court. The related contention that, properly interpreted, the judgment in the prior

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<sup>10</sup> Contrary to the representations of the Agency's counsel at oral argument, the judgment nowhere referred to "benefits."

<sup>11</sup> As the Agency points out, the Padillas did not mention Civil Code section 2941 in their complaint. They did, however, assert that they were entitled to cancellation or reconveyance of the deed of trust and cited the statute in their opposition to the Agency's demurrer as the basis for their claim. The Agency discussed the provision extensively in its reply and, as we have seen, convinced the trial court that it should not be applied because it conflicted with section 1090. Accordingly, the Agency cannot now profess to be surprised concerning the nature of the Padillas' claim.



litigation finally determined the continuing viability of other benefits due under the Buydown Agreement, including the obligation to provide affordable housing until 2024, likewise raises factual issues that are not resolved by the record before the court. (See *Aerojet-General Corp. v. American Excess Ins. Co.* (2002) 97 Cal.App.4th 387, 399 [noting that where judgment is ambiguous, the whole record of prior litigation may be examined for the purpose of removing the doubt]; *Casad v. Qualls* (1977) 70 Cal.App.3d 921, 927 [holding that burden of proof is on party asserting the defense of res judicata and that “[i]n carrying this burden of proof the party may resort to the judgment, the record of the entire proceedings, and extrinsic evidence”]; 5 Witkin, Cal. Procedure (4th ed. 1997) Pleading, § 918, p. 377 [“The defense of res judicata . . . usually requires the pleading of facts in the answer.”].) Accordingly, the trial court could not resolve these issues at the pleading stage; nor can we address them now. On remand, the parties will be able to raise any dispute they may have concerning the proper interpretation of the prior judgment and whether it bars any claim or defense asserted in the underlying litigation.

### **DISPOSITION**

The judgment is reversed. The matter is remanded for further proceedings.  
The Padillas are awarded their costs on appeal.

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

MANELLA, J.

We concur:

WILLHITE, Acting P. J.

SUZUKAWA, J.